

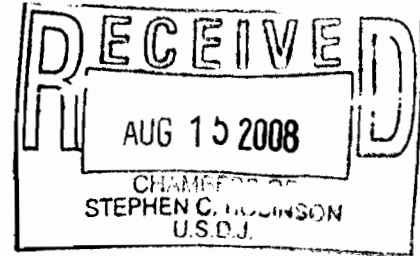
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**MEMO ENDORSED**

ANTHONY J. SIANO

August 13, 2008

Hon. Stephen C. Robinson, U.S.D.J.  
United States District Court, Southern District of New York  
United States Courthouse  
300 Quarropas St., Room 633  
White Plains, NY 10601



Re: **Rhodes v. Davis, 08 CIV 4283(SCR)**

Dear Judge Robinson:

I am counsel to the defendants in the above captioned action. I am writing to ask the Court to consider the enclosed exchange of correspondence between counsel for the plaintiff and myself, regarding the matter of the schedule for defendants' Rule 11 motion.

By way of background, on June 6, 2008, I wrote to the Court seeking permission to make a motion under Federal Rule of Civil Procedure 11. Your Honor held a status conference in the case on July 18, 2008. My colleague, Joseph J. Staropoli, Esq. appeared for the defendants and the plaintiff did not appear. At that conference, Mr. Staropoli re-raised the matter of defendants' request to make a Rule 11 motion and the Court set a schedule. According to that schedule, the motion was to be served on August 8, 2008. I have enclosed a copy of the transcript of those proceedings for the Court's review.

I failed to serve counsel for the plaintiff on August 8, 2008. The reason for this was that one of the supporting affidavits to be obtained relative to the motion was not executed by the affiant on Friday afternoon, August 8, 2008, before the affiant left his office for the day. In the late afternoon of August 8, when I became aware of the problem, I called counsel for the plaintiff to alert him to my problem. He was not available when I called and I left a message for him. I did not receive a return call before the end of the day on Friday, August 8, 2008.

I obtained a signature on the affidavit on Saturday morning, August 9, 2008, and hand delivered a set of papers to counsel for the plaintiff on Saturday, August 9, 2008, at about one in the afternoon. With the motion papers, I delivered a letter(enclosed herewith), in which I explained the reason for the one day delay and offering plaintiff's counsel three additional days to respond to my motion papers. As an alternative, I suggested that counsel seek a conference with the Court if my offer of additional time was not acceptable.

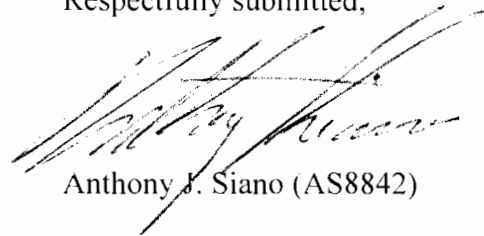


Today, I received the enclosed letter from counsel for the plaintiff in which he declines to "consent to the untimely service" of my motion papers. Plaintiff's counsel does not appear to intend to ask the Court to resolve this matter.

I ask the Court to resolve this unfortunate spat by amending the Court's scheduling order of July 18, 2008, to grant the plaintiff until September 11, 2008, to serve me with responsive papers and, otherwise, leaving the motion schedule in place.

I would note in closing that, in any event, under Fed. R. Civ. P. 11(c)(2), I cannot file my motion papers for twenty-one days and I told plaintiff's counsel that I do not intend to file them until September 2, 2008.


Respectfully submitted,



Anthony J. Siano (AS8842)

cc: Thomas C. Landrigan, Esq.

*Plaintiff has until close of business on  
September 15, 2008 to respond to defendant's motion.  
Defendant has until September 26, 2008 for his  
reply.*

**SO ORDERED**  
  
**STEPHEN C. ROBINSON**  
**UNITED STATES DISTRICT JUDGE**  
8/21/08